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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,731	03/23/2001	George Harry Hoffman	062834-0179	8181

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FOLEY AND LARDNER LLP
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EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
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3687

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10/25/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/815,731	Applicant(s) HOFFMAN ET AL.	
	Examiner Elaine Gort	Art Unit 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/3/10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 3-6, 8-11 and 13-15 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US Patent 6,901,381) in view of Hafner et al. (US Patent 5,893,076) and Myrick ("The Silent Thief").**

Brown et al. discloses the claimed method/system/computer product for providing a supplier or distributor interface, comprising:

receiving data from a store, the data relating to an amount of goods that are manually produced based on a recipe and sold by the stores (for example column 11 lines 15 to column 12 lines 21 discuss a computer system that tracks items or products sold, such as a hamburger meal that is produced manually based on a recipe stored in a file that contains the ingredients to the hamburger meal, for example including the hamburger patty.);

aggregating by one or more computers programmed to do so, the data based on one or more supplier and/or distributor parameters (the number of hamburger patties used based on the number of hamburger meals sold are accounted for);

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receiving a request relating to production of the goods (POS system operates as a cash register and recorder of all transactions thus receives a request for the sale of, for example, a hamburger meal, abstract. The sale relates to production of the goods as the good must be produced to be sold.);

extracting in response to the request the recipe from a database relevant to the production of the goods and that uses at least one material in the production of the goods (a file contains a recipe for items sold that includes ingredients within the good sold such as a hamburger patty in a hamburger meal, column 11, lines 15+) and an the amount of the material sold to the store (system keeps track of ingredient inventory from the time of receipt from a "particular commissary", column 11, line 61+, which includes the amount of patties sold by the commissary to the store. For example 10 hamburger patties.);

calculating by one or more computers programmed to do so, based on the recipe an amount of the at least one material that should have been used for the amount of the goods sold by the at least one store (system calculates how many patties should have been used for the hamburger meals sold); and

transmitting inventory information for use by the store using the material to make the goods (column 12 lines 1+ discuss ability to view the current inventory by the available ingredient for use by the user).

but is silent regarding: where the data is received from a plurality of stores of a supply chain and where the system utilizes a network/Internet and where a variance

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between an actual amount of a material used and the amount of the material that should have been used is calculated.

Hafner et al. teaches that it is known in the art of supply chain systems to receive data from a plurality of stores of a supply chain and to use a networked/Internet displaying computer system (column 3, line 19+) for communicating, tracking sales and ordering products for multiple locations (column 2 line 21).

Myrick teaches, for example in the first two paragraphs, that it is old and well known in the art of inventory reconciliation to identify variances between actual amounts of material used (such as detected by daily inventory levels) and the amounts of the material that should have been used (based on sales) to identify and prevent product losses that can occur from over dispensing, delivery accuracy, pilferage, product storage loss, miscalibrations, etc... order to identify, for business owners, losses and prevent future lost profits due to product loss.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method/system/computer of Brown et al. with the plurality of stores and networked Internet system as taught by Hafner et al., in order to communicate, track sales and place orders for multiple locations; and further to provide the method/system/computer of Brown et al. with the calculation of a loss/variance as taught by Myrick in order to identify and prevent product loss that can occur from over dispensing, delivery accuracy, pilferage, miscalibrations, etc...

Response to Arguments

3. Applicant's arguments filed 9/3/01 have been fully considered but they are not persuasive.

Applicant has argued that Brown does not disclose "calculating by one or more computers a variance between the amount of the material, that was actually used for the amount of goods sold by the at least one of the stores, sold to the at least one of the stores and the amount of the material that should have been used based on the recipe for the amount of the goods sold".

Examiner agrees, as Examiner has used Myrick to teach calculating a variance (such as a loss) between the amount of material that was actually used (based on accurate inventory tracking) and the amount of the material that should have been used (based on the amount of material that was believed to be sold, such as indicated by dispensing records) in order to identify and prevent product losses that can occur, such as by over dispensing, delivery accuracy, pilferage, product storage loss, miscalibrations, etc...

Applicant has argued that Myrick does not disclose "calculating by one or more computers a variance between the amount of the material, that was actually used for the amount of goods sold by the at least one of the stores, sold to the at least one of the stores and the amount of the material that should have been used based on the recipe for the amount of the goods sold".

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Examiner disagrees, as Myrick clearly teaches calculating a variance (such as a product loss, ("losses identified by SIR" such as are due to dispensing meter miscalibrations" in line 4 of Abstract) between the amount of material that was actually used (based on accurate inventory tracking, such as analyzing daily fuel inventory readings, line 2 of Abstract) and the amount of the material that should have been used (based on the amount of material that was believed to be sold, such as indicated by dispensing records, for example, the amount recorded as being dispensed by miscalibrated meters.) in order to identify and prevent product losses that can occur, such as by over dispensing, delivery accuracy, pilferage, product storage loss, miscalibrations, etc... with the benefit being to identify lost profits (line 6 of Abstract)

Examiner points out that the base reference, Brown, discloses tracking inventory usage based on ingredients used in recipes, such as hamburger patties, construed to be the amount of material that should have been used. Myrick is merely used to teach the concept of identifying losses by looking at what should have been dispensed (such as what the meters incorrectly stated as being dispensed) and comparing that to what was actually dispensed and the difference is the claimed variance. For example the volume of a soft drink could be metered and estimated for dispensing and tracked via the Brown system and, using the idea of identifying losses of Myrick, inventory measurements could be made to identify what was actually dispensed and a variance calculated in order to identify for business owners losses to prevent losses of future profits.

Applicant has argued that Myrick does not disclose any recipe, or making a determination of the amount of material that was actually used in purportedly following a recipe.

Examiner notes that Myrick was not taught to teach a recipe of making a determination of the amount of material following a recipe, But to teach calculating a variance, such as a product loss, based on an amount that should have been used (amount presumed to have been dispensed, such as the number of hamburger patties, cups or volume of drinks dispensed) and an amount that was actually used (measured amount used based on inventory measurement, based on the accurate tracking of inventory, such as by measuring the number of patties, number of cups and/or volume of drinks before and after the dispensing to generate an amount actually used) in order to identify for business owners losses and prevent future lost profits due to product loss. Examiner notes that Brown discloses using a recipe to determine what amount of material should have been used, for example a number of hamburger patties, cups used or volume of drinks dispensed, etc...

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/

Elaine Gort

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Primary Examiner, Art Unit 3687

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10/21/2010